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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellee, v. CURTIS JAMES COTTON, Defendant–Appellant.	Woodbury County Case No. FECR118538 S. CT. NO. 25–0959

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JEFFREY A. NEARY, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court erred by limiting Cotton's ability to present a defense and failing to accurately instruct the jury as to causation.

II. The State engaged in prosecutorial error in closing arguments, necessitating a new trial.

III. The district court imposed an illegal sentence when it ordered the offense was a forcible felony.

ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it raises a substantial question of changing legal principles that the Supreme Court should ultimately determine. *See* Iowa R. App. P. 6.903(2)(*a*)(4), 6.1101(2)(*c*), (*d*), (*f*) (2026). Specifically, the resolution of this appeal involves the determination of whether Appellant's conduct caused the decedent's injuries and provides the court an opportunity to clarify whether the "scope of liability" analysis applies in criminal cases. *See State v. Roache*, 920 N.W.2d 93, 102 (Iowa 2018) ("We have not yet extended the Restatement (Third) of Torts' scope-of-liability analysis to criminal cases, but we have referred to its factual-causation standard.").

Additionally, retention is appropriate because Cotton asks this Court limit the scope of *State v. Hubka*, 480 N.W.2d 867 (Iowa 1992). In *Hubka*, the Court found that evidence that the child victims were not wearing seatbelts and would have survived if they had been restrained were not relevant in a vehicular homicide case, thus preventing the jury from considering this evidence in making a causation determination. In contrast to *Hubka*, the decedent in this

case was an adult that was not wearing a seatbelt, in violation of Iowa law. Cotton requests this Court adopt the approach of other jurisdictions which provide that while the failure to use a seat belt is not a defense, a jury is allowed to consider this type of evidence in determining whether the defendant caused the victim's death. *See People v. Moore*, 631 N.W.2d 779, 781–84 (Mich. Ct. App. 2001)

As the trial court acknowledged, it believed it could not grant the defense's requests regarding causation instructions because it would change the status of the existing law; the trial court found the "issues are better addressed by the Iowa Supreme Court." D0236, Sentencing Tr., at 5:9–25 (06/06/2026). The district court noted the "difference of causation in the criminal setting and causation in the civil setting." D0236, at 6:3–6. The court noted it was "a good issue for the Supreme Court to take a look at . . . ." D0236, at 6:8–10. The district court agreed it seemed "fundamentally unfair" that the State was able to present evidence that the decedent was ejected because she was not wearing her seatbelt and that ejection caused her death, but the defense was

prevented from arguing that point in the context of causation. D0241, Trial vol.4, at 7:24–8:21. (04/25/2025).

NATURE OF THE CASE

Defendant–Appellant Curtis James Cotton appeals his conviction, sentence, and judgment following a jury trial. A jury found Cotton guilty of vehicular homicide, a class "B" felony, in violation of Iowa Code sections 321J.2 and 707.6A; and operating while intoxicated, in violation of Iowa Code section 321J.2. D0210, Sentencing Order, at 1 (06/06/2025). At sentencing, the district found the counts merged, and it sentenced Cotton to a term not to exceed twenty-five years in prison. D0210, at 2; D0236, Sentencing Tr., at 14:2–16 (06/06/2026). Pursuant to Iowa Code section 910.3B, it ordered the $150,000 restitution award. D0210, at 4; D0236, at 15:10–12. The district court also found Cotton had no reasonable ability to pay category "B" restitution. D0210, at 6; D0236, at 20:20–21.

STATEMENT OF THE FACTS

Just prior to 4:00 p.m., on February 21, 2023, there was a single-car accident on Interstate 29 southbound near mile marker

133 in Woodbury County. D0228, Trial vol.1, at 160:8–162:19, 186:8–11 (04/22/2025); D0240, Trial vol.2, at 11:5–25, 16:3–5 (04/23/2025). Traffic on the interstate was normal to busy that day, but the roadway was dry and clear. D0228, at 159:22–160:7; D0240, at 25:6–23, 57:6–59:7, 112:25–113:3. Though cold outside, there was no snow or other precipitation. D0240, at 57:6–1, 88:11–14, 112:20–22; D0239, at 14–16. A camera mounted on the dashboard of Jason Steele's semitruck, captured the moment the car lost control and left the roadway. D0240, at 66:3–17; D0143, Ex 19, Steele's Video, at 04:29–04:50.

Steele testified he saw an Oldsmobile Alero in the left lane, approaching his semitruck from behind. D0240, at 59:13–25. Steele testified he was driving with the flow of traffic, approximately one to two miles per hour over the speed limit of 70; he opined the Alero was going fairly fast because of "the rate that they were catching [the truck] for the speed" the truck was travelling. D0240, at 60:16–25. A pickup truck was passing Steele on the left, and there was a car in front of him in the right law a "few tractor trailer lengths

ahead." D0240, at 61:1–18; D0143, Ex 19, Steele's Video, at 04:29–04:50.

Steele testified the pickup had just passed enough in front of him to allow the Alero "to barely skate by" it and move into the right lane in front of Steele to pass the pickup from the right lane. D0240, at 62:5–13. However, once the Alero started to get into the right lane, it "realized that there was a car in front of them, slammed on the brakes very hard. . . , and then jerked the wheel to come back to the left" lane. D0240, at 62:5–18; D0143, at 04:29–04:50. The Alero then lost control, going sideways into the ditch on the right side of the interstate. D0240, at 63:22–18; D0143, at 04:29–04:50. Steele witnessed the car start to roll over. D0240, at 63:13–18. He testified he saw the car upside down and, when it started to complete the roll, he witnessed a person be ejected from the car's passenger side and flung out like a "ragdoll." D0240, at 63:16–64:3. Steele testified the person hit the ground and the car "roll[ed] over the top of them." D0240, at 10–15. Steele watched through his review mirror as the car rolled down the ditch until finally stopping. D0240, at 64:19–65:4.

Steele did not see the Alero's passenger make any sudden movements during this sequence. D0240, at 79:11–17. However, he readily agreed his attention was split because he was also focused on the road and other cars. D0240, at 79:11–21, 82:9–15. At trial, when watching the video, Steele testified he initially could see passenger's arm as the Alero was passing him, but that it was no longer in view just before the Alero went to move into the right lane. D0240, at 79:5–81:25. Steele also testified that just as the Alero moved beyond the front of his truck, the passenger looked like they were leaning towards the driver. D0240, at 82:5–9. Steele also stated immediately before the overcorrection into the left lane, he was not able to see the passenger's head at all. D0240, at 83:5–18. Later, a law enforcement officer agreed Steele's video showed the passenger leaning away from their window and that the passenger's head went "more oriented towards the center of the car" just moments before the car lost control. D0239, at 109:9–110:–7.

Rachel Fagen was also driving on the interstate that day and witnessed the accident. D0240, at 86:7–87:9. Fagen typically set her cruise control at 76 mph while driving on the interstate. D0240,

at 88:18–22. Fagen testified she had moved to the left lane to allow another car to merge onto the interstate from an onramp. D0240, at 89:7–19, 90:1–10. In her rearview mirror, she saw the Alero "coming up on [her car] very fast." D0240, at 89:12–13. The car that had merged onto the interstate was past her, so Fagen moved back into the right lane. D0240, at 89:13–16. She testified the Alero "swerved kind of towards the right lane and then back into the left lane and went very fast," passing her on the left. D0240, at 89:7–19.

Steele's truck was "aways ahead" of her, but Fagen saw the Alero attempt to pass the truck. D0240, at 94:2–13. She testified she saw the car "swerve back to the right a little to go past the car in the left lane . . . and then they swerved back to the left lane." D0240, at 94:2–13. Fagen described the Alero as "bobb[ling] in between the two lanes" before "fly[in] out the right side into the ditch," where "it rolled several times." D0240, at 14–19. She saw a person get ejected from the Alero as it was rolling. D0240, at 94:16–22. Fagen pulled to the right shoulder and called 911. D0240, at 96:4–17.

Fagen testified she saw man, later identified as Defendant–Appellant Curtis James Cotton, in a black jacket exit the vehicle. D0240, at 97:24–4. She saw him rummaging around in the backseat and grab a winter hat. D0240, at 97:2–5. Fagen testified she yelled at him to see if he was okay, but he did not respond. D0240, at 97:6–11. Fagen testified a semitruck stopped, and a woman ran over to the ejected person with blankets. D0240, at 98:5–99:18. She then saw Cotton go over there as well. D0240, at 98:12–16.

Nicholas Bauerly, a law enforcement officer with the Iowa Department of Transportation, was working at the fixed scale facility nearby. D0228, at 157:19–23. A passing vehicle alerted Bauerly of the roll-over crash. D0228, at 160:15–161:3. When Bauerly arrived, Cotton was standing outside of the car. D0228, at 163:17–164:23. A woman, later identified as Ashley Bond, was unresponsive and laying on the ground approximately fifteen feet away from the vehicle. D0228, at 163:19–20, 165:12–14, 188:7–12; D0240, at 100:24–101:3, 174:12–25. Several witnesses described Cotton as frantic, distraught, and concerned about Bond; he begged

people to call an ambulance and help Bond. D0228, at 170:18–25, 171:18–23, 188:22–189:10.

Bauerly testified Bond was breathing, her eyes were open, and she had a pulse, but she did not respond to his commands. D0228, at 165:18–166:14. However, shortly after Bond stopped breathing and her pulse was no longer detectable, prompting law enforcement officers to start CPR until the medical personnel arrived and took over the first aid. D0228, at 167:10–169:16; D0240, at 150:4–151:10. Cotton was nearby Bond while she was getting CPR and was "worried . . . if she was alive;" and officers had to tell him to stand back. D0240, at 132:6–11, 133:6–15.

Chad Schweitzeberger, a Iowa State Trooper, who had also responded took Cotton back to his patrol vehicle. D0240, at 111:3–112:13, 132:20–23. He stated Cotton "was extremely distraught," and the officer thought he should not see Bond, who was "not in good condition." D0240, at 111:3–112:19. Schweitzeberger testified Cotton "was extremely emotional," continually talking about Bond and whether she would be okay. D0240, at 113:23–114:3. Cotton was upset because he believed it was taking too long for first

responders to get Bond to the hospital for medical treatment. D0240, at 114:4–11.

The traffic investigator for Sheriff's Department, Deputy Frederick Beckman, was called on scene. D0240, at 175:21–176:2; D0239, at 15:12–23, 28:3–24. Based on the damage to the vehicle, including the windows and doors, Beckman concluded Bond would have been the passenger of the vehicle. D0239, at 35:6–41:23. However, Cotton had told law enforcement he was not driving, but that he was in the front passenger seat of the vehicle at the time of the crash. D0240, at 119:8–120:3, 183:13–187:11.

Schweitzeberger testified he suspected Cotton had been drinking alcohol, as the trooper could smell it on Cotton's person. D0240, at 117:14–21. Bauerly also testified he suspected Cotton was under the influence of alcohol. D0228, at 175:9–15. Cotton was about two feet from Bauerly when the officer rendered medical assistance to Bond. D0228, at 171:1–10. Bauerly noticed Cotton's "eyes were bloodshot and watery." D0228, at 171:11–15. Bauerly also testified he smelled "the odor of an alcoholic beverage" coming from Cotton. D0228, at 171:14–18. Based on these observations

and the suspicion that Cotton had been the driver, Bauerly obtained a search warrant for a sample of Cotton's blood. D0228, at 176:15–177:3, 179:3–21.

A medical helicopter landed nearby and transported Bond to MercyOne Hospital, where she subsequently died. D0228, at 166:20–167:6, 196:18–197:24; D0240, at 134:14–16, 175:8–12. Law enforcement transported Cotton to MercyOne. D0228, at 177:5–7. D0240, at 126:11–127, 134:8–13. Cotton was not visibly injured, and he refused medical attention both on scene and after he arrived at MercyOne Hospital. D0228, at 189:16–18; D0240, at 135:9–136:4.

At the hospital, around 8:00 p.m., a phlebotomist drew Cotton's blood pursuant to the search warrant. D0240, at 139:3–142:1, 163:10–167:8, 201:24–202:7. Cotton was completely cooperative with the blood draw. D0240, at 145:12–21, 161:24–162:1, 206:10–13. Cotton's blood alcohol concentration was 0.124, and it contained marijuana metabolites. D0239, at 124:11–16, 145:7–22; D0132, Ex. 8, Report 1, at 1; D0133, Ex. 9, Report 2, at 1. Law enforcement did not ever request Cotton complete any of the

standard field sobriety tests. D0228, at 190:16–191:2; D0240, at 204:20–23.

Bond and Cotton had been dating for several years, were engaged, and lived together at the time of the accident. D0228, at 189:3–10; D0240, at 205:5–15; D0239, at 194:1–18. Cotton told Woodbury County Sheriff's Sergeant Kyle Cleveringa questioned Cotton at the hospital. D0240, at 168:21–25, 180:3–182:10. Cotton told Cleveringa that he and Bond had visited friends in Sioux City before going to the Hard Rock Casino. D0228, at 177:17–19; D0240, at 137:124. Cotton initially denied they had been drinking but then told the officer both he and Bond had alcoholic beverages while at the casino, including a shot of Rumple Minze. D0228, at 177:15–22; D0240, at 137:20–24, 184:1–14.

Cotton consistently told Cleveringa that Bond was driving at the time of the accident and he was in the front passenger seat. D0228, at 177:22–23; D0240, at 138:2–11, 187:9–11. Cleveringa informed Cotton that Bond had died. D0240, at 185:10–19. Cotton was extremely upset and emotional. D0240, at 185:20–186:9, 206:2–5. Cleveringa took Cotton to the Winnavegas Casino, which

was closer to the relative coming to pick up Cotton. D0240, at 201:19–23, 204:24–205:4. Cleveringa stated he could "still smell a pretty strong odor of an alcoholic beverage still coming off [Cotton's] person while . . . riding to the casino." D0240, at 202:16–21.

Evidence showed neither Cotton nor Bond were wearing seatbelts at the time of the crash. D0239, at 14:6–10, 35:13–35:5, 45:10–14. The car itself did not appear to cause the crash. D0239, at 44:19–46:5. It had no mechanical issues, the tires had normal tread, and the brakes were in working order. D0239, at 44:19–46:5, 86:1–3.

Video surveillance from the Hard Rock Casino showed Cotton driving the Alero into the parking lot; the Alero tapped the car in the spot in front of it with its bumper while parking. D0239, at 49:7–51:15, 57:2–16; D0134, Ex 10, HardRock Video, Clip at #3 0:00–02:14. Cotton and Bond entered the casino around 2:07 p.m. D0134, at Clip #5 0:00–0:10. A server delivered drinks to both Bond and Cotton, once at 2:38 p.m. and once at 3:15 p.m.; the video shows Cotton consuming the drink at times. D0134, at Clip #6, Clip #7, Clip #10. The two exited the casino at approximately 3:42 p.m.

D0134, at Clip #11 0:00–0:12. They walked to the car, and Cotton got into the driver's seat and Bond got into the front passenger side; the car then exited the lot. D0134, at Clip #13–15; D0239, at 61:10–14.

Video from the Iowa Department of Transportation showed the Alero entering the interstate and driving southbound. D0148, at Ex. 25, DOT Video; D0239, at 68:11–74:15. Beckman used the DOT videos to calculate Alero's average speed as 84 mph; using the last video before the crash, which was about five miles from the crash site, the deputy estimated the Alero was traveling 92 mph in a 70 mph zone. D0239, at 80:1–85:7. However, Beckman also concluded the Alero was only going 70 mph, which was the speed limit, at the time of the accident. D0239, at 97:21–98:11.

The State Medical Examiner testified Bond died from multiple blunt force injuries. D0239, at 183:20–22. Bond had hemorrhaging in her brain and lacerations to her organs, including her liver and lung; both the brain and other organ damage could have separately been fatal. D0239, at 169:25–181:25. The medical examiner testified Bond's injuries were a result of her being ejected from the

vehicle. D0239, at 13–19. Bond's blood alcohol concentration was 0.192. D0239, at 183:1–2.

Cotton testified in his defense. D0239, at 193:4–19. The day of the accident, Cotton and Bond went to lunch in Omaha and then decided to visit Bond's friend in Sioux City. D0239, at 194:19–15:23. Cotton testified afterwords they went to the casino. D0239, at 196:1–5. Cotton played table games while Bond kept him company; he thought he had one or two alcoholic drinks while Bond had two or three. D0239, at 196:17–198:7. The two were on their way back home to Omaha. D0239, at 200:12–15.

Cotton testified he and Bond were arguing in the car on the way home. D0239, at 200:16–22. Bond was accusing him of talking to other women and wanted to see his phone. D0239, at 200:16–201:1. Cotton refused to let Bond look through his phone. D0239, at 201:11–22. Bond told Cotton that if he did not let her examine his phone then she wanted him to get out of the vehicle. D0239, at 201:11–202:2. Cotton agreed to leave, but only after they got to Omaha, where he could get a ride elsewhere. D0239, at 202:3–10. Bond attempted to grab Cotton's phone a few times from off his lap,

where it was sitting. D0239, at 202:13–18. Cotton then moved the phone and set it inside the driver's side door. D0239, at 202:13–19.

Cotton testified Bond leaned over and grabbed the steering wheel and "yank[ed] it towards her way, towards the right." D0239, at 202:19–21, 205:29–206:10. The vehicle went into the right lane; Cotton braked and "began to try to take back control of the wheel going left." D0239, at 202:21–203:5. The vehicle lost control and went into the ditch. D0239, at 203:8—207:8. Cotton remembered the car rolling a few times. D0239, at 209:9–14. After it stopped, Cotton realized Bond had been thrown from the car. D0239, at 209:15–25. He then went through the car to find a phone to call 911. D0239, at 209:22–210:8. Once he exited the vehicle, he realized other people had already called 911. D0239, at 210:1–8.

Cotton admitted to lying when he said he was not driving at the time of the accident. D0239, at 199:13–18, 223:3–230:11. Cotton never told any of the several law enforcement officer that he interacted with that day that Bond and he had been arguing at the time of the crash or that she had caused it by grabbing the steering wheel. D0240, at 128:12–19, 203:2–10; D0239, at 226:7–17,

230:11–20. Cotton admitted he had been drinking and was under the influence of alcohol at the time of the accident, but he denied that his intoxication caused the accident; rather, Cotton testified Bond jerking the wheel to the right ultimately caused the crash. D0239, at 210:25–211:13, 231:9–18.

Cotton testified he lied about what had occurred because he was distraught about what had happened. D0239, at 199:19–24. He also testified that he was not only shaken by shaken by what had occurred, he did not want Bond to be blamed for the accident. D0239, at 230:21–231:8. Cotton stated Bond could act irrationally when intoxicated, but he had been thoroughly shocked at what she had done and what had occurred. D0239, at 208:4–22.

ARGUMENT

I. The district court erred by limiting Cotton's ability to present a defense and failing to accurately instruct the jury as to causation.

***Preservation of Error*:** On the second to last day of trial, the State filed a motion in limine to prevent Cotton from arguing Bond's failure to wear a seatbelt was a superseding cause of her death. D0241, Trial vol.4, at 3:9–4:20 (04/25/2025). The defense resisted,

noting that an adult's failure to use a seatbelt was a crime, and that prohibiting him from raising it as superseding cause violated his constitutional right to present a defense. D0241, at 4:22–6:7:4. The district court prohibiting Cotton from arguing Bond's failure to use a seatbelt caused her death. D0241, at 10:1–14.

The State then asked the district court to include an additional sentence in the proximate cause instruction that stated "Bond's failure to wear a seatbelt cannot be a super[s]eding cause of her death." D0241, at 11:20–12:16, 25:5–14. The court agreed it would instruct the jury accordingly. D0241, at 12:17–13:22, 15:1–5.

Cotton asked for a jury instruction, similar to Iowa Civil Jury Instruction 700.8. D0241, at 14:2–17, 24:5–11. The defense asked the court to inform the jury that simply because an accident occurred where a party was injured or died, does not necessarily mean that a crime occurred. D0241, at 14:3–17. The district court denied the request. D0241, at 14:18–19, 26:2–3.

Cotton objected to Instruction 11 and requested there be an "additional sentence that instructs the jury that the burden is on the State to prove Ashley Bond's conduct was not a superseding

cause." D0241, at 22:21–23:1. The defense also objected to Instruction 12, which was the instruction where the district court told the jury Bond's failure to use a seatbelt could not be the sole proximate cause of her serious injury or death. D0241, at 23:21–24:1. The district court noted the defense's objections, but overruled them and instructed the jury accordingly. D0241, at 26:11–14.

As outlined above, Cotton preserved error by timely objecting to the jury instructions and receiving adverse rulings from the district court. *See State v. Davis*, 951 N.W.2d 8, 16 (Iowa 2020) (quoting *State v. Taggart*, 430 N.W.2d 423, 425 (Iowa 1988)).

***Standard of Review*:** The Court reviews challenges to jury instructions for errors at law. *State v. Benson*, 919 N.W.2d 237, 241 (Iowa 2018) (citations omitted). However, to the extent the issue raises a violation of Cotton's constitutional rights to due process, a fair trial, and to present a defense, review is de novo. *See State v. Cashen*, 789 N.W.2d 400, 405 (Iowa 2010), *superseded by statute on other grounds by* 2011 Iowa Acts. ch. 8, § 2 (codified at Iowa Code § 622.10 (2011)).

***Discussion*:** "The Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 9 and 10 of the Iowa Constitution provide the defendant with due process rights, including the right to a fair trial and a right to present a defense. U.S. Const. amends. VI, XIV; Iowa Const. art. I, §§ 9, 10; *see also State v. Clark*, 814 N.W.2d 551, 560 (Iowa 2012); *State v. Simpson*, 587 N.W.2d 770, 771 (Iowa 1998); *State v. Russell*, 897 N.W.2d 717, 732 (Iowa 2017). "'[A] criminal defendant has a due process right to present evidence to a jury that might influence the jury's determination of guilt.'" *State v. Thompson*, 836 N.W.2d 470, 480 (Iowa 2013) (quoting *Cashen*, 789 N.W.2d at 407). The Iowa Supreme Court has explained the right to present a defense is in part "the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Simpson*, 587 N.W.2d 770, 771 (Iowa 1998) (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)). The Court has emphasized this right is linked to the importance of due process, finding that "[t]he right to present a defense is essential to a fair trial." *Id.*

The district court "is required to 'instruct the jury as to the law applicable to all material issues in the case . . . .'" *State v. Marin*, 788 N.W.2d 833, 837 (Iowa 2010), *overruled on other grounds by Alcala v. Marriott Intern., Inc.*, 880 N.W.2d 699, 707–08 (Iowa 2016). "[T]he court is not required to give any particular form of an instruction" but "must . . . give instructions that fairly state the law as applied to the facts of the case." *Id.* at 838. "[T]he instruction must be a correct statement of the law and the instructions as a whole should adequately and correctly cover the substance" of the applicable law. *State v. Monk*, 514 N.W.2d 448, 451 (Iowa 1994). Failure to sufficiently instruct a jury on the applicable law is reversible error. *State v. Bennett*, 503 N.W.2d 42, 45 (Iowa Ct. App. 1993). The Court will find prejudice when the instruction "'could reasonably have misled or misdirected the jury.'" *State v. Hoyman*, 863 N.W.2d 1, 7 (Iowa 2015) (citation omitted).

The district court's ruling improperly interfered with Cotton's defense, preventing him from the fair chance of presenting his defense, thereby violating his constitutional rights to do so. As the defense noted, the instructions as given took away the ability of

Cotton to pursue that line of defense. *See* D0241, at 13:5–9. Accordingly, this Court should find the district court's limitations on Cotton's defense and the related jury instructions prejudiced Cotton, thereby requiring a new trial. *See Benson*, 919 N.W.2d at 241–42 (citations omitted).

Cotton objected to Instructions 11 and 12. D0241, at 22:21–24:1. Instruction 11 provided:

> In regard to Element 2 of Instruction No. 10, the State must prove that the Defendant's act or acts were a proximate cause of the death or serious injury of Ashley Bond. The Defendant claims that the sole proximate cause of Ashley Bond's death or serious injury was the conduct of Ashley Bond. The conduct of the party is a proximate cause of death or serious injury when it is a substantial factor in producing death or serious injury and when the death or serious injury would not have happened except for the conduct.
>
> "Substantial" means the party's conduct has such an effect in producing the death or serious injury as to lead a reasonable person to regard it as a cause.
>
> There can be more than one proximate cause. Sole proximate cause means the only proximate cause.
>
> The State does not have to prove that the Defendant's act or acts was the sole proximate cause of death or serious injury; however, the State must prove that the Defendant's act or acts was a proximate cause of death or serious injury.

> Ashley Bond's conduct was the sole proximate cause of her own death or serious injury if all the following propositions are true:
>
> 1. The conduct of Ashley Bond caused her own death or serious injury.
>
> 2. The conduct of the Defendant did not create or substantially increase the risk that Ashley Bond would have died or been seriously injured through her own conduct.
>
> 3. The conduct of Ashely Bond was not reasonably foreseeable to someone in the Defendant's position.
>
> If Ashley Bond's conduct was the sole proximate cause of her own death or serious injury, then the Defendant is not guilty of Vehicular Homicide.

D0191, Jury Instructions, at 11–12 (04/25/2025). Instruction 12 further provided, "Ashley Bond's failure to wear a seatbelt cannot be a sole proximate cause of her serious injury or death." D0191, at 14.

In *State v. Adams*, the Iowa Supreme Court concluded that it was "the State's burden under section 707.6A(1) to prove a causal connection between the defendant's intoxicated driving *and the victim's death*." *State v. Adams*, 810 N.W.2d 365, 371 (Iowa 2012)

(emphasis added). The Court found "[a] defendant may be found guilty of homicide by vehicle only if the jury finds beyond a reasonable doubt that his criminal act of driving under the influence of alcohol *caused the victim's death*." *Id.* Because the State must prove Cotton caused Bond's death, as stated in *Adams*, the district court erred in preventing Cotton from arguing Bond's failure to use a seatbelt was a superseding cause of her death and/or it stopped Cotton's driving under the influence from being a substantial factor in producing Bond's death.

Cotton acknowledges the Iowa Supreme Court in *State v. Hubka*, 480 N.W.2d 867 (Iowa 1992), found evidence that the child victims were not wearing seatbelts was not relevant to a defendant's criminal liability in a vehicular homicide proceeding. However, in *Hubka*, the Court found the defendant was not prejudiced because the jury actually heard evidence that the children were not properly restrained. *See id.* at 869. Moreover, *Hubka* is not directly controlling as it involved children victims, and Iowa law directly prohibited the jury from considering the lack of seatbelts or child

restraint systems as evidence of comparative fault in civil statutes. *See id.* at 869–870.

In contrast, this case does not involve a child victim, but rather an adult at the time—Bond. Furthermore, Iowa Code section 321.445 specifically provides the front passenger of a vehicle must wear "a properly adjusted and fastened safety belt or harness any time the vehicle is in forward motion on a street or highway in this state." Iowa Code § 321.445(2) (2025). The failure to do so is a simple misdemeanor punishable as a scheduled violation. *See id.* § 321.445(2), § 805.8(14)(*c*)(1). Additionally, because Bond was older than fourteen, Cotton was not criminally liable for her failure to use a seatbelt. *See id.* § 321.445(3). Notably, a jury in a civil case may consider an adult's failure to wear a seatbelt to mitigate damages if there is "substantial evidence that the failure to wear a safety belt or safety harness contributed to the injury or injuries." *See id.* § 321.445(4). Because *Hubka* involved children, which the statute excepts from similar consideration, it did not present the same question. *See id.* §§ 321.445(4), 321.446 ("Failure to use a child restraint system, safety belts, or safety harnesses as required by

this section does not constitute negligence nor is the failure admissible as evidence in a civil action.").

Rather than follow *Hubka*, which involved Iowa law that specifically prohibited a jury's consideration of evidence children were not in safety restraints, in cases where an adult is not wearing a seatbelt during an accident, Iowa courts should follow the approach of other jurisdictions, such as Michigan. Michigan's courts have found that victim's use of a seatbelt is relevant and the jury should consider that evidence when determining whether the defendant caused the victim's death. *See People v. Moore*, 631 N.W.2d 779, 781–84 (Mich. Ct. App. 2001). That Court noted "the case is not about whether the decedent's failure to use the seat belt caused the accident, but is about whether the decedent's alleged negligence caused the decedent's death." *Id.* at 783. The Michigan Court found:

> [A]though a victim's contributory negligence is a factor to consider in determining whether the defendant's negligence caused the victim's death, it is not a defense. Further, the negligent act of a third party is not a defense, but is only one factor to be considered in ascertaining whether the defendant's negligence caused the victim's death. . . . [T]he evidence of the decedent's failure to wear

> his seat belt is directly relevant to whether the defendant's conduct . . . was a substantial cause of the . . . death.

Id. (citations and internal quotation marks omitted). It noted the defendant had secured experts to opine that the decedent would not have died if he was wearing a restraint and testify that the "decedent's loss of control of his vehicle after it struck the defendant's truck was caused by the failure to wear a seat belt." *Id.* Other courts have also found that a decedent's negligence is not a complete criminal defense but that it should be considered by the jury in order to determine whether the defendant's conduct is a proximate cause of death. *See, e.g., State v. Farner*, 66 S.W.3d 188, 201 (Tenn. 2001); *State v. Wilson*, 421 P.3d 742, 749 (Kan. 2018) (quoting *State v. Chastain*, 960 P.2d 756, 762 (Kan. 1998)) ("'While contributory negligence is no defense in a prosecution for vehicular homicide, it is a circumstance to be considered along with all other evidence to determine whether appellant's conduct was or was not the proximate cause of decedent's deaths. In some instances, a decedent's contributory negligence may have been a substantial factor in his death and a superseding cause thereof; it may have

intervened between a defendant's conduct and the fatal result so as to be itself the proximate cause.'"); *see also Bowman v. State*, 618 So.2d 763, 764 (Fla. Dist. Ct. App. 1993) (Anstead, J., dissenting) ("I would also hold that the trial court erred in excluding evidence that the death of the minor victim may have been caused by the failure to secure him in a child restraint seat. A jury charged with determining the criminal responsibility for a death should not be deprived as to the cause of death. This is especially important where there is a substantial dispute as to appellant's role in causing the death of the victim.").

When analyzing factual causation, the court considers whether "the harm would not have occurred absent the conduct" of the defendant. *State v. Tribble,* 790 N.W.2d 121, 127 (Iowa 2010) (quoting Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 26, at 346 (2010)) (hereinafter Restatement (Third)). This means "but for the defendant's conduct, the harm or damage would not have occurred." *Marti*, 290 N.W.2d 570, 585 (Iowa 1980). While normally causation in a criminal case can be resolved under a "but for" factual causation analysis, when the

circumstances leading to the harm are attenuated or involve intervening circumstances, then "proximate" cause comes into play. *State v. Adams*, 810 N.W.2d 365, 371 (Iowa 2012); *see also Tribble,* 790 N.W.2d at 126–27.

Under the facts of this case, a jury could have found that any connection between Cotton's driving and Bond's death was too attenuated if it was able to consider her grabbing the wheel combined with her failure to use a seatbelt. *See State v. Ayers*, 478 N.W.2d 606, 607 (Iowa 1991) (finding the defendant's action of selling a stolen gun was a but-for cause of the victim's death but was too attenuated to the act that caused the death itself). It also could have considered whether Bond's conduct of grabbing the wheel and failure to wear a seatbelt were together an intervening and superseding cause of her death. However, the district court's jury instruction specifically told the jury that it could not consider Bond's failure to use a seatbelt in determining whether her conduct was the sole proximate cause of her death. *See* D0191, at 13.

This case also illustrates why the Court should adopt the "scope of liability" framework in criminal actions. In civil negligence

cases, Iowa has abandoned the old formulation of proximate causation and adopted the "scope of liability" framework advocated in the Restatement (Third) of Torts. *See Thompson v. Kaczinski*, 774 N.W.2d 829, 839 (Iowa 2009). In criminal matters, the Iowa Supreme Court has not expressly adopted the "scope of liability" limitation to causation, but it has noted that it might be applicable. *See State v. Roache*, 920 N.W.2d 93, 102 (Iowa 2018) ("We have not extended the Restatement (Third) of Tort's scope-of-liability analysis to criminal cases, but we have referred to its factual-causation standard."); *see also State v. Tyler*, 873 N.W.2d 741, 749-50 (Iowa 2016) (noting the adoption of "scope of liability" in civil cases but concluding connection from Tyler's actions and death of victim were not so attenuated that proximate cause principles needed to be applied); *State v. Hennings*, 791 N.W.2d 828, 835 (Iowa 2010) (applying but-for causation to determine whether defendant's action were motivated by the victims' race).

A consideration of scope of liability "is fact-intensive" and "requires consideration of the risks that made the actor's conduct tortious and a determination of whether the harm at issue is a

result of any of those risks." *Thompson v. Kaczinski*, 774 N.W.2d 829, 838 (Iowa 2009) (quoting Restatement (Third) § 29 cmt. *d*). This is referred to as the "risk standard," and "is intended to prevent the unjustified imposition of liability by 'confining the liability's scope to the reasons for holding the actor liable in the first place.'" *Thompson*, 774 N.W.2d at 838 (quoting Restatement (Third), § 29 cmt. *d*). The drafters of the Restatement (Third) and the Iowa Supreme Court recognized the key benefits to the limitation of liability with the risk standard: its simplicity and its appeal to "intuitive notions of fairness and proportionality by limiting liability to harms that result from risks created by the actor's wrongful conduct, but for no others." *Thompson*, 774 N.W.2d at 838 (quoting Restatement (Third) § 29, cmt. *e*). They also noted that the standard had flexibility to address fairness considerations created by the specific facts of a case. *Thompson*, 774 N.W.2d at 838.

The risk standard limitation on liability also applies in intentional torts. As described in the Restatement (Third) regarding the scope of liability for intentional or reckless tortfeasors.

> (a) An actor who intentionally causes harm is subject to liability for that harm even if it was unlikely to occur.
>
> (b) An actor who intentionally or recklessly causes harm is subject to liability for a broader range of harms for which that actor would be liable if only acting negligently. In general, the important factors in determining the scope of liability are the moral culpability of the actor, as reflected in the reasons for and intent in committing the tortious acts, the seriousness of the harm intended and threatened by those acts, and the degree to which the actor's conduct deviated from appropriate care.
>
> (c) Notwithstanding Subsections (a) and (b), an actor who intentionally or recklessly causes harm is not subject to liability for harm the risk of which was not increased by the actor's intentional or reckless conduct.

Restatement (Third) of Torts § 33.

The drafters explain that, as described in section (a), when a tortfeasor commits an act with the intention to cause a specific harm, he will be liable for that harm if it occurs, even if it was unlikely. Restatement (Third) § 33 cmt. *d*. For unintended harms, though, a tortfeasor's liability will depend on his moral culpability. The factors to consider in this assessment are "whether the tortfeasor acted with the purpose to cause harm or only with the knowledge that the harm was substantially certain to occur; the maliciousness of the tortfeasor's intent; and the seriousness of the harm intended." *Id.* at cmt. *e*.

In evaluating the liability of an intentional tortfeasor for fraud, the Iowa Supreme Court noted that the "modern trend is to refocus the analysis of legal causation from the foreseeability of the harm to a risk-based standard." *Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 740 (Iowa 2009) citing the Restatement (Third). The court acknowledged that while intentional tortfeasors are generally liable for a broader range of harms than an unintentional tortfeasor, "'[t]he cases are in accord that even a willful or intentional [tortfeasor] does not become an insurer of the safety of those whom he has wronged.'" *Spreitzer*, 779 N.W.2d at 741 (quoting *Johnson v. Greer,* 477 F.2d 101, 106 (5th Cir. 1973)). As with the scope of liability for unintentional torts, "intentional and reckless tortfeasors are not liable for harms whose risks were not increased by the tortious conduct, even if that conduct was a factual cause of the harm." *Spreitzer*, 779 N.W.2d at 741 (quoting Restatement (Third), § 33(c) & cmt. *f*).

> Stated in terms of risk instead of foreseeability, this principle limits the scope of liability for tortious conduct by requiring the conduct to have "enhanced (at the time the defendant acted) the chances of the harm occurring or that it would increase the chances risk of a similar

> accident harm in the future if the defendant should repeat the same wrong." In other words, a tortfeasor "'is not liable to a person whom he intended to harm and who has been harmed, unless from the standpoint of a reasonable man, his act has in some degree increased the risk of that harm.'"

Spreitzer, 779 N.W.2d at 741 (citations omitted).

In this case, the record lacks evidence that suggests the likelihood Bond would reach over and grab the steering wheel, while not wearing her seatbelt, causing the car to roll, and her ejection from the vehicle, was not increased by Cotton's mere driving of the vehicle down the interstate. Thus, there is the question of whether the jury was properly able to consider causation because of the way the district court instructed it.

Moreover, the *Adams* decision supports the defense's requested instructions regarding both the State's burden of proving Bond's conduct was not the sole proximate cause of her death beyond a reasonable doubt and the fact that there was an accident where a person was injured or died does not mean a crime occurred. The Iowa Supreme Court's decision in *State v. Adams* makes it clear that the State has the burden of proving Cotton's

intoxication caused the accident and Bond's death. *Adams*, 810 N.W.2d at 371. Thus, the *Adams* Court recognized there are times where there could be an intoxicated driver involved in an accident, but where the intoxicated driver was not criminally liable. Therefore, both of Cotton's requested instructions were accurate statements of law. Nor did the instructions make either of these points clear to the jury on these aspects of the law. Accordingly, the district court had a duty to submit the defense's proposed instructions on the burden of proof related to Bond's conduct and the statement relating the relationship between an accident causing death or serious injury and criminal liability. *See Benson*, 919 N.W.2d at 246–47 (quoting *Alcala*, 880 N.W.2d at 707) ("The district court must submit 'a requested jury instruction if it correctly states the applicable law and is not embodied in other instructions.'").

Where the instructional error is of a constitutional dimension, "the State must show beyond a reasonable doubt the error did not result in prejudice" in order to avoid reversal. *State v. Hanes*, 790 N.W.2d 545, 550 (Iowa 2010). Where the instructional error is not of a constitutional dimension, our appellate courts "presume

prejudice and reverse unless the record affirmatively establishes there was no prejudice." *Id.* at 551. In this case, the instructional errors implicate Cotton's constitutional due process rights to a fair trial and to present a defense. *See* U.S. Const. amends. VI, XIV; Iowa Const. art. I, § 9, § 10; *see also State v. Simpson*, 587 N.W.2d 770, 771 (Iowa 1998). Thus, the instructional error is of a constitutional dimension. However, even if it is a nonconstitutional error, a full review of the record does not affirmatively establish there was no prejudice to Cotton.

The law regarding causation is complex. The error in the jury instructions denied a crucial avenue for Cotton to establish that he was not responsible for the accident and Bond's death. The objected-to language of these instructions specifically told the jury that it could not consider Bond's failure to use a seatbelt restraint as an intervening and superseding cause. But under the circumstances present in this case, whether Bond's failure to use a seatbelt constituted an intervening and superseding cause of her death was a question for the jury; this is particularly true if one considers its combination with her conduct of grabbing the wheel.

See State v. Marti, 290 N.W.2d 570, 586 (Iowa 1980) (citations omitted) (noting "question is for jury when reasonable minds may differ as to the outcome of application of test for intervening, superseding cause"). As discussed above, there was evidence from which the jury could have found that any serious injury or death to Bond was because of her own failure to use a seat belt, particularly when riding in a vehicle travelling on the interstate and grabbing the steering wheel. Notably, there has been at least one occasion for the Iowa Supreme Court to consider and find that another individual's *illegal and negligent* act can be a intervening and superseding force, thereby cutting off a defendant's criminal liability. *See, e.g.*, *Hayward v. P.D.A., Inc.*, 573 N.W.2d 29, 33–34 (Iowa 1997). It should also do so for Bond's illegal and negligent acts.

While the jury could have rejected Cotton's testimony that Bond grabbed the wheel, it is not clear from the jury instructions that it did so. And the district court's instructions failed to make it clear that the State had to disprove this conduct beyond a reasonable doubt as the sole proximate cause (whether combined or

not with her failure to wear a seatbelt), by showing Cotton's intoxication caused the accident and Bond's subsequent death. Rather, the instructions only required the jury find his driving while under the influence was merely a but-for cause (but for him driving, there would not have been an accident).

The instructions did not explain the law applicable to Cotton's defense to the jury, and they improperly hampering his ability to present a defense. *See id.* Rather than adequately explain causation to the jury, the instructions specifically informed the jury it could not consider a portion of his defense that contended Bond's actions were a superseding cause of the accident and her death. Thus, the guilty verdict in this trial was not surely unattributable to the error. *See State v. Shorter*, 945 N.W.2d 1, 6 (Iowa 2020) (citation omitted). Accordingly, the district court's refusal to instruct on Cotton's defense related to causation prejudiced Cotton, and he is entitled to a new trial. *See id.* (citing *Benson*, 919 N.W.2d at 241–42).

II. The State engaged in prosecutorial error in closing arguments, necessitating a new trial.

Preservation of Error: During its rebuttal, Cotton objected to the State's argument as improper, and the district court overruled the objection. D0241, at 64:7–65:11, 6713–68:16. Accordingly, error is preserved. *State v. Neiderbach*, 837 N.W.2d 180, 209 (Iowa 2013) (quoting *State v. Phillips*, 226 N.W.2d 16, 19 (Iowa 1975)) ("[D]efense counsel need not move for a mistrial to preserve error on a claim of prosecutorial misconduct [or error] when 'he promptly objected to the [prosecutor's] statement . . . [and] [t]he objection was overruled.'")).

***Standard of Review*:** The appellate court reviews claims of prosecutorial error for an abuse of discretion. *State v. Neiderbach*, 837 N.W.2d 180, 190 (Iowa 2013). However, the Court reviews constitutional issues de novo. *State v. Frazier*, 559 N.W.2d 34, 38 (Iowa Ct. App. 1996). An argument that the prosecutor committed error or misconduct, thereby failing to comply with a defendant's due process rights, necessarily has a constitutional basis. This

Court should clarify the proper standard of review for a claim of due process violation based on prosecutorial error is de novo.

Discussion: A prosecutor owes a duty to the defendant as well as to the public. *State v. Graves*, 668 N.W.2d 860, 870 (Iowa 2003). "[W]hile a prosecutor is properly an advocate for the State within the bounds of the law, the prosecutor's primary interest should be to see that justice is done, not to obtain a conviction." *Id.* Part of a prosecutor's duty is to "assure the defendant a fair trial" by adhering to the "the requirements of due process throughout the trial." *Id.*

"A defendant's right to a fair trial is violated if a prosecutor fails to comply with the requirements of due process at the trial, whether by virtue of prosecutorial error or misconduct." *State v. Plain*, 898 N.W.2d 801, 818 (Iowa 2017) (citation omitted). Whether the conduct is categorized as misconduct or error depends on whether the prosecutor's breach of their duty to the defendant was intentional or reckless. *Id.* If the behavior is intentional or reckless, it is misconduct; if not, and is merely where the prosecutor has "exercised poor judgment" or "made a mistake," then it is

prosecutorial error. *Id.* Regardless of whether the conduct is misconduct or error, a defendant who establishes prejudice is entitled to a new trial. *See id.* at 818–19 (citation omitted).

The State is allowed "some latitude" in closing arguments to "draw conclusions and argue permissible inferences which reasonably flow from the evidence presented." *State v. Carey*, 709 N.W.2d 547, 554 (Iowa 2006) (quoting *State v. Thornton*, 498 N.W.2d 670, 676 (Iowa 1993)). "However, counsel has no right to create evidence or misstate the facts." *Id.* (quoting *State v. Greene*, 592 N.W.2d 24, 32 (Iowa 1999)). Nor is a prosecutor allowed to "express his or her personal beliefs." *Plain*, 898 N.W.2d at 818 (citation omitted). "[M]isconduct [or error] occurs when the prosecutor seeks [a conviction] through unnecessary and over inflammatory means that go outside the record or threaten to improperly incite the passions of the jury." *Carey*, 709 N.W.2d 547, 556 (Iowa 2006). To determine whether prosecutorial error denied a defendant his right to fair trial, making retrial necessary, the appellate court considers (1) the "severity and pervasiveness" of the conduct; (2) the significance of the comments to the central issues

in the case; (3) the strength of the State's case; (4) the use of cautionary instructions or other remedial measures; and (5) the extent to which the defense invited the inappropriate comments. *Graves*, 668 N.W.2d at 877. "The most important factor is the strength of the State's case against the defendant." *State v. Boggs*, 741 N.W.2d 492, 508–09 (Iowa 2007).

During rebuttal, the prosecutor argued to the jury that Cotton was

> protecting himself from what he did on that day and the person that he wants to blame is the one person who is not here to defend herself.
>
> *The traumatic and sad irony of that, the one person who can't come and say what happened in contrast to the defendant's story, is Ashley Bond. She has no voice. But she does. It's you. You are her voice for what happened when the accident happened.*

D0241, at 64:1–12 (emphasis added). After the district court overruled the defense's objection to this line of argument, the prosecutor again told the jury that it was "that voice" and urged the jury to "[h]old the defendant accountable for what he did." D0241, 64:1–65:11.

Here, the prosecutor's arguments about the jury being Bond's voice was improper. First, the statements essentially instructed the jurors to "place themselves in the position of the victim" and be her voice, which is inappropriate. *See State v. Musser*, 721 N.W.2d 734, 754 (Iowa 2006) (citations omitted). "Direct appeals to jurors to place themselves in the situation of one of the parties . . . are condemned by the courts." *Oldsen v. Jarvis*, 159 N.W.2d 431, 435 (Iowa 1968) (citation omitted). Second, the statements were inflammatory and prejudicial. *See Plain*, 898 N.W.2d at 818 (citation omitted). The State's arguments wrongly urged the jurors to decide the case by being a voice for Bond, who was dead and could not testify against Cotton, and hold Cotton accountable for Bond's death. Accordingly, these remarks were improper as they asked the jury to consider the case on something other than the evidence in front of it. *See Musser*, 721 N.W.2d at 755–56 ("[W]e think the prosecutor here inappropriately diverted the jury from its duty to decide the case solely on the evidence by injecting issues broader than the guilt or innocence of the defendant . . . ."); *Lisle v. State*, 937 P.2d 473, 482 (Nev. 1997) (finding the prosecutor's

statements to the jury to hold the defendant "accountable" were improper).

In this case, a full consideration of these factors demonstrates that the prosecution's comments prejudiced Cotton. While the State's improper argument was only a short piece of the closing argument, the comments went to the central issue in the case. Notably, the Iowa Supreme Court has noted prejudice may result from even an isolated instance of prosecutorial misconduct or error. *See State v. Webb*, 244 N.W.2d 332, 333 (Iowa 1976).

Moreover, the district court erroneously denied the defense's objection to the prosecutor's improper argument; accordingly it did not give any curative instructions regarding the State's inappropriate remarks. Furthermore, the prosecutor's improper emotional appeal that the jury be Bond's voice occurred during rebuttal, without any chance for the defense to respond to the inappropriate arguments, thereby mitigating the prejudice of the comments or allowing any attempt nullify them. Rather, the improper statements were essentially the last and final closing

remarks made, emphasizing their importance to the jury and capitalizing on the recency effect.

Nor was this a trial of overwhelming evidence. Cotton's testimony was Bond was responsible for jerking the vehicle over into the other lane, which ultimately caused it to lose control and crash. The unbiased video of the accident at least partially corroborated this testimony, as it showed Bond leaning over towards the driver's seat immediately prior to the car's abrupt lane switch. The medical examiner testified Bond's death was caused by injuries sustained because she was ejected from the vehicle during the accident. Thus, the most important factor—the strength of the State's case—weighs heavily in favor of finding the State's inappropriate arguments prejudiced Cotton. *See Boggs*, 741 N.W.2d at 508–09.

The State improperly argued that the jury should be Bond's voice and hold Cotton accountable for her death. These comments were inflammatory and prejudicial, as they asked the jury to make its decision on factors other than the evidence in front of it. *See Musser*, 721 N.W.2d at 755–56. Accordingly, the prosecutor's

statements violated Cotton's due process rights to a fair trial. This Court should reverse and remand for a new trial. *See Plain*, 898 N.W.2d at 818–819.

III. The district court imposed an illegal sentence when it ordered the offense was a forcible felony.

Preservation of Error: The general rule of error preservation is not applicable to void, illegal, or procedurally defective sentences. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994). An illegal sentence is "one not authorized by statute." *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001). The Court may correct an illegal sentence at any time. Iowa R. Crim. P. 2.24(5)(a) (2025).

Standard of Review: The Court reviews a sentence imposed in a criminal case, challenges to the legality of a sentence, and issues of statutory interpretation all for errors at law for correction of errors at law. Iowa R. App. P. 6.907 (2025); *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002); *State v. Sisk*, 577 N.W.2d 414, 416 (Iowa 1998); *Doe v. State*, 943 N.W.2d 608, 609 (Iowa 2020) (citation omitted).

Discussion: When the district court sentenced Cotton, it stated the offense was a forcible felony. D0236, at 18:13–14 ("I do not set an appeal bond in this case because it's a forcible felony . . ."). The written sentencing order also has a box checked indicating the offense is a forcible felony. D0210, at 2. While the offense of vehicular homicide carries a mandatory sentence of imprisonment, similar to a forcible felony, the offense is not a forcible felony under Iowa law. *See* Iowa Code § 907.3 (2025) (stating the district court cannot suspend a "sentence imposed pursuant to section 707.6A, subsection 1"). Accordingly, the portion of the sentencing order indicating it is a forcible felony is an illegal sentence, as it is not authorized by statute. *See Tindell*, 629 N.W.2d at 359.

Iowa Code section 702.11 defines a forcible felony. *See* Iowa Code § 702.11. The term includes "any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree." *Id.* The statute also contains some exceptions to the general rule, none of which are applicable here. *Id.*

When the Court interprets a statute, it considers the plain meaning of the statutory language. *State v. Nall*, 894 N.W.2d 514, 518 (Iowa 2017) (citations omitted); *State v. Hearn*, 797 N.W.2d 577, 583 (Iowa 2011) ("The starting point of interpreting a statue is analysis of the language chosen by the legislature."). The Court has said, "'[w]e do not inquire what the legislature meant; we ask only what the statute means.'" *Doe*, 943 N.W.2d at 610 (citation omitted). The Court "seek[s] to determine the ordinary and fair meaning of the statutory language at issue." *Id.* (citations omitted). When it undertakes to determine the meaning of the language at issue, the Court takes "into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes." *Id.* (citations omitted).

Applying the plain language of Iowa Code section 702.11, it is clear the offense of vehicle homicide is not a forcible felony. *See State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998) (citation omitted) ("When a statue is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms."). Vehicular homicide is not classified as any of the listed felonies. *See*

Iowa Code § 702.11 (2025). Moreover, section 702.11's relationship with other statutes illustrates vehicular homicide is not a forcible felony; other statutes in Iowa Code list both the vehicular offense and forcible felonies separately. *See, e.g.*, Iowa Code § 232.52 ("T]he child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707 . . . .";); *id.* § 811.1(b), (c) (listing defendants as not bailable if convicted or appealing certain convictions including a "forcible felony as defined in section 702.11" and "any class "B" felony included in section . . . 707.6A") *id.* § 907.3 (separately stating the section does not apply to forcible felonies and then later listing a sentence under 707.6A(1) as being ineligible for a suspended sentence). Thus, the listing of vehicular homicide separately from a forcible felony establishes the offense is not included a forcible felony; if it was then listing the vehicular homicide offense would be superfluous and redundant. *See Vroegh v. Iowa Dept. Corr.*, 972 N.W.2d 686, 703 (Iowa 2022) (citation omitted) ("We generally don't read statutes to imply that the legislature wasted its time and ink by including redundant

provisions. Canons of statutory interpretation require that every word and every provision in a statute is to be given effect, if possible, and *not* deemed mere surplusage."); *see also State v. Boone*, 989 N.W.2d 645, 650 (Iowa 2023) (citation omitted) (noting the court looks "beyond the isolated words and phrases to obtain a construction that is in harmony" with other statutory provisions).

Iowa Code section 702.11 does not include vehicular homicide, the offense of which Cotton was convicted, in the definition of a forcible felony. Thus, the district court's order and classification of the offense as a forcible felony is illegal, as it is not authorized by statute. *See State v. Letscher*, 888 N.W.2d 880 (Iowa 2016) (citation omitted) ("[A] sentence is illegal if it is not authorized by statute."). Accordingly, this Court should vacate the portion of Cotton's sentencing order that classifies the offense as a forcible felony and remanding for the entry of a corrected sentencing order.

CONCLUSION

For the reasons outlined above, Defendant–Appellant Curtis James Cotton requests this Court reverse his conviction and remand to district court for further proceedings. Alternatively,

Cotton requests the Court vacate the portion of his sentencing order indicating the offense was a forcible felony and remand for entry of a corrected order.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*g*)(1) and 6.903(1)(*i*)(1) because:

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/s/ Mary K. Conroy Dated: 04/13/2026

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